

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: September 16, 2013; Ruling No. 2014-3712; Agency: Department of Juvenile Justice; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

COMPLIANCE RULING

In the matter of the Department of Juvenile Justice
Ruling Number 2014-3712
September 16, 2013

The Department of Juvenile Justice (the agency) has requested a compliance ruling related to the grievant's April 4, 2013 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding her grievance.

FACTS

On or about April 4, 2013, the grievant initiated a grievance with the agency. On July 1, 2013, the agency mailed the grievant its third step response. On August 9, 2013, the agency mailed a letter of noncompliance to the grievant via certified mail, indicating that the agency had not received a response from her. Additionally, the agency requested a response from the grievant within five workdays upon receipt of the noncompliance letter. The certified mailing was returned, unclaimed, to the agency on or about August 29, 2013.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.¹ That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without EDR's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.² If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from EDR, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EDR's order.³

In this case, the agency's request for a compliance ruling appears to be premature because the agency has not shown that it first notified the grievant in writing of the alleged procedural violation. There is no indication that the notice of noncompliance has been received by the grievant. Based on a review of the information submitted by the parties, however, it is evident that more than five workdays have elapsed since the agency provided the grievant with the third step response and the grievant has not responded.⁴ In the interest of expeditiously resolving the issues raised in this grievance, the grievant is ordered to correct her noncompliance **within ten work days of the date of this ruling** by notifying her human resources office in writing that she wishes either to conclude the grievance or request qualification of her grievance. If she does not, the agency may administratively close the grievance without any further action on its part. The grievance may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

EDR's rulings on matters of compliance are final and nonappealable.⁵



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³ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, EDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁴ Although the grievant has not received the agency's notice of noncompliance, EDR has notified the grievant that the agency has requested a compliance ruling regarding the grievant's failure to advance or conclude her grievance.

⁵ See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).